

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1392

BY: HAMILTON (Jeff)

AS INTRODUCED

AN ACT RELATING TO MOTOR VEHICLES; PROVIDING SHORT TITLE; DEFINING TERMS; EXEMPTING CERTAIN REPAIRS FROM APPLICABILITY OF THE ACT; PROHIBITING MOTOR VEHICLE REPAIRS WITHOUT WRITTEN CONSENT; PROVIDING FOR WAIVER OF WRITTEN CONSENT IN CERTAIN INSTANCES; PROVIDING FOR ORAL CONSENT AND CERTAIN PROCEDURES RELATED THERETO; PROVIDING PROCEDURES CONCERNING CONTENT OF WRITTEN ESTIMATE; PROVIDING ADDITIONAL PROCEDURES FOR ESTIMATES AFTER DISASSEMBLY; PROVIDING FOR CERTAIN ORAL ESTIMATES OF DISASSEMBLED MOTOR VEHICLES; EXCLUDING TOWING CHARGES FROM WRITTEN ESTIMATE REQUIREMENTS; LIMITING REPAIR CHARGES IN ABSENCE OF ESTIMATE; REQUIRING NOTIFICATION OF ESTIMATE CHANGES; REQUIRING NOTICE OF COMPLETION DATE CHANGE; PROVIDING PROVISION FOR CONTRACT CANCELLATION IN CERTAIN INSTANCES; PROVIDING FOR RETURN OF AUTO UPON EXCESS CHARGES OVER ORIGINAL ESTIMATE; PROHIBITING CERTAIN STORAGE CHARGES; AUTHORIZING CERTAIN REPAIR CHARGES; REQUIRING REQUEST OF CERTAIN REASSEMBLY UPON RETURN OF MOTOR VEHICLE; LIMITING REASSEMBLY CHARGES; PROVIDING FOR ALL ESTIMATES TO BE VOLUNTARY; PROVIDING THAT EXCESS PAYMENT NOT WAIVER OF CERTAIN RIGHTS; REQUIRING

ATTACHMENT OF ESTIMATES TO INVOICE; REQUIRING
CONSENT UPON USE OF CERTAIN PARTS; REQUIRING
CERTAIN INFORMATION ON CUSTOMER INVOICE; REQUIRING
RETURN OF CERTAIN PARTS; EXEMPTING CERTAIN MOTOR
VEHICLES FROM APPLICATION OF THE ACT; PROVIDING
CERTAIN PROHIBITION; PROVIDING FOR FINES, PENALTIES
AND CERTAIN ACTIONS; PROVIDING FOR CERTAIN LIENS;
DEFINING TERM; PROVIDING FOR CODIFICATION; AND
PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1600 of Title 47, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Motor
Vehicle Repair Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1601 of Title 47, unless there
is created a duplication in numbering, reads as follows:

As used in the Oklahoma Motor Vehicle Repair Act:

1. "Customer" means the owner, the agent of the owner, or a
family member, employee, or any other person whose use of the
vehicle is authorized by the owner;

2. "Motor vehicle" means every self-propelled vehicle intended
primarily for use and operation on the public highways. The term
does not include trucks and truck tractors having a gross vehicle
weight of more than eight thousand five hundred (8,500) pounds, nor
does it include farm tractors and other machines and tools used in

the production, harvesting, and care of farm products, nor does it include motorcycles;

3. "Motor vehicle repair garage" means any natural person, partnership, corporation, trust, association, or group of persons associated in fact although not a legal entity, which, with intent to make a profit or gain of money or other thing of value, engages in the business or occupation of performing repairs on a motor vehicle, including repairs on body parts;

4. "Necessary" means essential to a desired or projected end as stated by the customer or indispensable to avoid loss or damage;

5. "Repairs on a motor vehicle" or "repairs" includes maintenance, diagnosis, repairs, service, and parts replacement but does not include washing the vehicle or adding gasoline or oil to the vehicle; and

6. "Collector's item" means any automobile which has enhanced value due to the automobile's age or uniqueness.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1602 of Title 47, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall not apply where the total cost of the labor and parts is One Hundred Dollars (\$100.00) or less.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1603 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. 1. No repairs on a motor vehicle shall be performed by a motor vehicle repair garage unless the garage obtains the written consent of the customer.

2. The required written consent may be waived by the customer only when the motor vehicle has been towed to the motor vehicle repair garage or the customer has left the motor vehicle with the motor vehicle repair garage outside of normal business hours or when

the customer has signed a waiver in compliance with paragraph 2 of subsection B of this section.

3. When the customer has not given the motor vehicle repair garage written consent to perform repairs, no repairs shall be performed unless the garage first communicates orally to the customer the written estimate of the total cost of such repairs and the customer then consents to the required repairs. A record of such communication and consent shall be made on the invoice by the motor vehicle repair garage and shall include the date, time, manner of consent, telephone number called, if any, and the names of the persons giving and receiving such consent.

B. 1. Except as provided in paragraph 2 of this subsection, no repairs shall be performed by a motor vehicle repair garage unless said garage first submits in writing or, where allowed by this section, orally communicates to the customer an estimate of the total cost of any such repairs, not including any applicable sales tax. The written estimate shall include the expected completion date of such repairs and the storage charges which shall accrue if the customer has not picked up the motor vehicle within three (3) days, exclusive of Saturday, Sunday, and any legal holiday, after notification of the completion of authorized repairs or if the customer fails to authorize repairs to be performed within three (3) days, exclusive of Saturday, Sunday, and any legal holiday, after the date of communication of an estimate. The estimate provided to the customer shall state conspicuously that, except for body shop repair parts and except for exchanged or warranty parts which shall only be presented to the customer for examination and not returned, the customer is entitled to the return of the replaced parts if he so requests at the time of consenting to or authorizing the repairs. The estimate shall be recorded on or attached to the invoice required by Section 6 of this act.

2. A customer may waive his right to receive any estimate, either written or oral, prior to authorizing repairs by signing his name and the date below the following statement which shall be in bold type: "I DO NOT WISH TO RECEIVE ANY ESTIMATE, EITHER WRITTEN OR ORAL, TO WHICH I AM ENTITLED BY LAW, BEFORE REPAIRS ARE AUTHORIZED". The signing of such waiver does not constitute an authorization of repairs, which shall be a separate statement.

3. a. in the event that it is necessary to disassemble, or partially disassemble, a motor vehicle or a motor vehicle part in order to provide the customer with an estimate for required repairs, the written estimate required in paragraph 1 of this subsection shall show the cost of reassembly in the event that the customer elects not to proceed with the repairs of the motor vehicle or motor vehicle part. The estimate shall also include the total cost of labor and parts to replace those expendable items which are normally destroyed by such disassembly. No act or disassembly which would prevent the restoration of the same unit to its former condition may be undertaken unless the motor vehicle repair garage has fully informed the customer of that fact in writing on the invoice and the customer consents to the disassembly, and
- b. any estimate of required repairs given after a disassembly shall comply with the requirements of paragraph 1 of this subsection, except that such written estimate may then be communicated orally to the customer. A record of such communication shall be made on the invoice by the motor vehicle repair garage, including the date, time, manner of communication, telephone number called, if any, and names of persons giving and receiving such consent.

4. Towing charges are excluded from the written or oral estimate and consent requirements of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1604 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except when an estimate has been waived pursuant to subsection B of Section 4 of this act, no charge shall be made for labor and parts in excess of the estimate, plus twenty percent (20%) thereof, without the consent of the customer to the additional charge before performance of the labor or installation of the parts not included in the estimate, but subcontract cost amounts for parts beyond the control of the garage to correctly estimate may be charged for in addition to the estimate. Consent by the customer to additional charges may be written or oral. In either case, a record of such consent shall be made on the invoice by the motor vehicle repair garage and shall include the date, time, manner of consent, telephone number called, if any, and the names of the persons giving and receiving the consent.

B. 1. The customer shall be notified in writing on the invoice of any changes in the expected completion date of the repairs and of the new expected completion date. Such notification may be communicated to the customer orally, but such communication, written or oral, must be made no more than three (3) days after the original completion date, exclusive of Saturday, Sunday, and any legal holiday. If communicated orally, a record of such communication shall be made on the invoice by the motor vehicle repair garage and shall include the date, time, telephone number called, if any, and the names of the persons giving and receiving such communication.

2. No additional changes in the completion date shall be made unless the consent of the customer to the additional change is obtained. If the required consent is given orally, the motor vehicle repair garage shall make a record of such consent on the

invoice and shall include the date, time, manner of consent, telephone number called, if any, and the names of the persons giving such consent.

3. If the motor vehicle repair garage fails to notify the customer of the change in the completion date or if the customer refuses to consent to an additional change in the completion date, the contract may be canceled at the option of either the customer or the motor vehicle repair garage. Once the contract has been canceled in this manner, the motor vehicle repair garage shall be required to reassemble the motor vehicle in substantially the same condition in which it was delivered to the motor vehicle repair garage without cost to the customer; except that the customer shall be required to pay for any repairs already completed as specified in paragraph 1 of subsection C of Section 6 of this act. The motor vehicle repair garage shall not be liable for any resulting damages resulting from a customer's refusal to repair new items listed by the motor vehicle repair garage.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1605 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except when an estimate has been waived pursuant to subsection B of Section 4 of this act, the charge for labor and parts is over the original estimate or any subsequent estimate by ten percent (10%) thereof or Twenty-five Dollars (\$25.00), whichever is less, and unless further oral or written consent is given by the customer pursuant to Section 4 of this act, the motor vehicle repair garage shall return the motor vehicle to the customer upon the payment of the amount of the original estimate or any subsequent estimate plus ten percent (10%) thereof or Twenty-five Dollars (\$25.00), whichever is less, and the motor vehicle repair garage shall not be entitled to a lien for said excess pursuant to Section 142 et seq. of Title 42 of the Oklahoma Statutes.

B. No charge shall be made for storage of the motor vehicle unless the motor vehicle is not picked up by the customer within three (3) days, exclusive of Saturday, Sunday, and any legal holidays, after the customer is notified that the repairs have been completed and the customer was notified, as required by subsection B of Section 4 of this act, that such storage charges would accrue.

C. 1. If the customer cancels previously authorized repairs prior to their completion, the motor vehicle repair garage shall be entitled to charge the customer for repairs, including labor and parts, which have already been performed so long as said charge does not exceed the original estimate or any subsequent estimate for the repairs already performed.

2. In requesting the return of the motor vehicle subsequent to the cancellation of previously authorized repairs, the customer shall specify whether it should be reassembled in substantially the same condition in which it was delivered to the motor vehicle repair garage or in such a lesser condition of assembly as the customer shall designate. Reassembly shall be completed by the motor vehicle repair garage within three (3) days of the customer's request, excluding Saturday, Sunday, and any legal holiday.

3. All charges for reassembly, whether or not the requested repairs are completed, shall be included in the original estimate or in any subsequent estimate.

D. Nothing in this section shall require a motor vehicle repair garage to give an estimate if such garage does not agree to perform the requested repairs.

E. Payment by the customer of any amount in excess of those allowed by this article or for unauthorized repairs is not a waiver of any of the rights granted by this act to the customer, nor shall such payment be construed as consent to additional repairs or excess charges.

F. All written estimates and other information required by this section shall be recorded on or attached to the invoice described in Section 8 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1606 of Title 47, unless there is created a duplication in numbering, reads as follows:

The motor vehicle repair garage shall obtain the consent of the customer before any used, reconditioned, or rebuilt parts are installed in the motor vehicle. If such consent is oral, the motor vehicle repair garage shall make a record of such consent on the invoice and shall include the date, time, manner of consent, telephone number called, if any, and names of persons giving and receiving such consent. The motor vehicle repair garage shall adjust the original estimate for new parts to reflect the altered cost if used, reconditioned, or rebuilt parts are authorized and installed.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1607 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. All repairs done by a motor vehicle repair garage shall be recorded on a customer's invoice. A legible copy of the customer's invoice shall be given to the customer when the motor vehicle is returned to the customer. The original or a legible copy of the customer's invoice shall be retained for at least three (3) years by the motor vehicle repair garage.

B. The customer's invoice shall include the following:

1. The name and address of the customer;
2. The year, make, odometer reading on the date the motor vehicle was brought in for repairs, and license number of the motor vehicle;
3. The date the motor vehicle was received for repairs;

4. An itemization of each part added to or replaced in the motor vehicle; a description of each part by name and/or identifying number; clear identification of which parts are used, reconditioned, or rebuilt; and the charges levied for each part added or replaced;

5. The amount charged for labor, the full name or employee number of each mechanic or repairman who is whole or in part performed repairs, and the identification of the specific stage of repair for which each mechanic or repairman named was partially or wholly responsible;

6. An itemized statement of all additional charges, including storage, service and handling, and taxes;

7. An identification of any repairs subcontracted to another repair garage; and

8. The legible initials of the person filling out any portion of the invoice not specified in this subsection.

C. Itemization of a particular part is not required on the customer's invoice if no charge is levied for that part.

D. Miscellaneous designations such as "shop supplies", "paint and paint supplies", and "shop materials" may be used on the customer's invoice.

E. Designation of mechanics, repairmen, parts, or labor is not required on the customer's invoice if the customer has been given a flat-rate price, if such repairs are customarily done and billed on a flat-rate price basis and agreed upon by the customer, and if such flat-rates are conspicuously posted by the motor vehicle repair garage or otherwise made available to the customer prior to rendering the estimate.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1608 of Title 47, unless there is created a duplication in numbering, reads as follows:

Except for body shop repair parts and parts that the motor vehicle repair garage is required to return to the manufacturer or

distributor under a warranty or exchange arrangement, the motor vehicle repair garage shall return replaced parts to the customer at the time of the completion of the repairs if he so requests at the time of consenting to or authorizing the repairs.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1609 of Title 47, unless there is created a duplication in numbering, reads as follows:

The provisions of this article shall not apply to repairs of any motor vehicle twenty-five or more years old or of any motor vehicle which is a collector's item as defined in Section 2 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1610 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. No motor vehicle repair garage or any employee or contract laborer of such garage shall knowingly:

1. Charge for repairs which have not been consented to by the customer or charge for repairs in excess of amounts allowed by this act;

2. Represent that repairs are necessary when such is not a fact;

3. Represent that repairs have been performed when such is not a fact; or

4. Represent that a motor vehicle or motor vehicle part being diagnosed is in dangerous condition when such is not a fact.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1611 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, any motor vehicle repair garage or any employee of such garage not providing a written or oral estimate as required under Section 4 of this act commits a misdemeanor and, upon conviction thereof, shall

be punished by a fine of not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1,000.00).

B. Any motor vehicle repair garage or any employee of such garage who violates Section 10 of this act commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) and imprisonment of not more than one (1) year or by both.

C. In any civil action for the enforcement of this article, the court may award reasonable attorney fees and costs to the prevailing party, and a customer shall be entitled to three times his damages for failure of any motor vehicle repair garage or any employee of such garage to comply with this article, except for clerical errors or omissions; but in no event shall such damages be less than One Hundred Fifty Dollars (\$150.00). The customer shall first demand his damages from the motor vehicle repair garage at least ten (10) days prior to the filing of any such action, exclusive of Saturday, Sunday, and any legal holiday.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1612 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. A motor vehicle repair garage which is entitled to a lien under Section 142 et seq. of Title 42 of the Oklahoma Statutes for motor vehicle repairs and which has released the motor vehicle upon receipt of payment for such repairs in the form of a check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation shall be entitled to the restoration of the lien if the check, draft, or order is not honored for full payment or is dishonored upon its presentment and if the maker, issuer, or drawer fails, within twelve (12) days after receiving notice from the motor vehicle repair garage of nonpayment or dishonor, to pay the check, draft, or order. Restoration of such lien shall entitle the motor vehicle repair garage to regain possession of the motor

vehicle. In regaining possession, the motor vehicle repair garage may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

B. "Notice", as used in subsection A of this section, means notice given to the person entitled thereto, either in person or in writing. Such notice in writing shall be conclusively presumed to have been given when deposited by registered or certified mail, return receipt requested and postage prepaid, in the United States mail and addressed to such person at his address as it appears on the invoice or such check, draft, or order.

SECTION 14. This act shall become effective September 1, 1991.

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